

***United States Court of Appeals  
for the Second Circuit***



**APPELLANT'S  
BRIEF**





# ORIGINAL

15-1266

To be argued by  
BERTRAM ZWEIBON

B  
P/S

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

RESPONDENT,

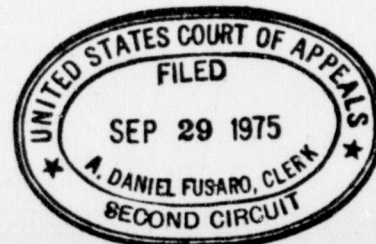
-against-

JOHN W. WATSON,

DEFENDANT-APPELLANT.

BRIEF ON BEHALF OF DEFENDANT-APPELLANT  
APPENDICES ON BEHALF OF DEFENDANT-APPELLANT

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UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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UNITED STATES OF AMERICA,

RESPONDENT,

-against-

JOHN W. WATSON,

DEFENDANT-APPELLANT.

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: DOCKET NO.:

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STATEMENT PURSUANT TO RULE 28 (3)

PRELIMINARY STATEMENT

This is an appeal from a judgment of conviction rendered on July 8, 1975 in the United States District Court for the Southern District of New York (Gagliardi, J.) convicting appellant after a jury trial of the crimes of embezzlement (two counts) in violation of Title 18 U.S.C. §1709 and forgery (two counts) in violation of Title 18 U.S.C. §495. Appellant was sentenced to concurrent terms of three months. The Court suspended these sentences and placed him on probation for 18 months.

QUESTION PRESENTED

Whether the Government's proof was sufficient to sustain appellant's convictions of both the forgery and the embezzlement charges.

## STATEMENT OF FACTS

Appellant was charged in a nine count indictment with committing the following crimes: Count one charged that on September 3, 1974, Appellant, while employed by the Postal Service, embezzled a United States Treasury check payable to one Josephine Rodriguez; count two charged that on April 3, 1974, Appellant embezzled a check sent to Candida R. Guimaraes for the benefit of her children; count three charged that on May 1, 1974, Appellant embezzled a check sent to Marta Rivera; counts four, five, and six charged that Appellant embezzled three City Welfare checks payable to Aida Santiago; counts seven and eight charged Appellant with forging the names of Josephine Rodriguez and Marta Rivera respectively; and count nine charged him with uttering a forged writing with intent to defraud the United States.\*

Since appellant was convicted of embezzlement and forgery of the checks made payable to Josephine Rodriguez and Marta Rivera, the facts relating only to these particular crimes will be set forth.

JOSEPHINE RODRIGUEZ, 41 years of age, testified that she presently lives at 202 Rivington Street in Manhattan. (32)\*\* Prior to September 16, 1973, she lived at 500 Southern Boulevard in the Bronx and it was appellant who delivered her mail to this particular address.

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\*Indictment is set forth in the Appendix, A-1.

\*\*Numerical references are to the pages of the trial transcript.



While living at this address, she had been receiving welfare checks once a month. (34) However, she never received her 1974 January check or her 1974 February check. (35) Accordingly, she and her aunt went to file a claim. (36) The witness then identified checks dated January 1, 1974 payable to her which she never had received. Mrs. Rodriguez also stated that the signatures on the backs of the checks were not in her handwriting, nor did she ever give anyone permission to sign the checks. (38)

FILIMENA JIMENEZ, the aunt of Josephine Rodriguez, testified that the signature on the back of the checks was not her niece's handwriting. (56) In March of 1975, Appellant came to her house and told her that he was in trouble because of Josephine's checks and requested their help. (59) Appellant told her that it was a girl with an Afro at the bank at 149th Street who had cashed the checks because he put his initials on the checks. (59)

MARTA RIVERA, 55 years of age, testified that she lives at 551 Wales Avenue in the Bronx. (63) In April and May of 1974, she was supposed to receive supplementary checks from Social Security in the amount of \$199.20 (64) She never received these checks and went to the Social Security office to report this. (64) She identified a check dated May 1, 1974 as a Treasury check which had the address of 531 Wales Avenue. However, she never lived there. (66) Although

her name was signed on the back of the check, she never received it, nor signed it. (67) Moreover, she never gave anyone permission to sign her name. (67) The witness stated that she did not know Appellant, and that she has never been to the First National City Bank on 149th Street. (68)

HYMEL FRIEDMAN, Assistant Manager of the Hub Station Post Office on Westchester Avenue in the Bronx, stated that Appellant was a carrier working on Route 11. Both Josephine Rodriguez' and Marta Rivera's addresses were on his route. (76) He acknowledged that there was no such address as 531 Wales Avenue. (76) During Josephine Rodriguez' change of address, Appellant was also working on that route. (79) He stated that Appellant was a very good employee, who was well mannered and easy to get along with. (81) He did an excellent job, and had a minimum of complaints registered against him. (81)

JOSEPH ESPOSITO, a letter carrier working on Route 5, testified that his route included Mrs. Marta Rivera's address at 551 Wales Avenue, and he knew this woman. (84) In 1974, Mrs. Rivera was receiving Social Security supplementary checks, but there were improper addresses on these checks: to wit, 531 Wales Avenue. (84) This latter address would have been on Appellant's route. Appellant did give him about four to five checks to deliver to Mrs. Rivera. (85)



PAMELA PRESSLEY, 23 years of age, testified that in June of 1970, she worked first as a teller and then a head teller at First National City Bank at 833 East 149th Street. (90) She knew Appellant, who was a mailman in the neighborhood. Appellant also had an account in the bank in 1974. (91) During the period that she was head teller, Appellant on at least three to four different occasions would accompany people into the bank and identify them so that they could cash their welfare checks. (92) These people were usually Spanish women. (92)

According to this witness, during the period of January through May of 1974, Appellant came into the bank and cashed about 25 welfare or government checks made out to various payees. None of these checks were made out to Appellant. The names appearing on the back of the checks were the owners of the checks. (93)

She identified the check dated January 3, 1974 with the payee, Josephine Rodriguez, as one of the checks that she had cashed. (96) Marta Rivera's check dated May 1, 1974 was cashed in the bank, but she did not know which teller cashed the check. Marta Rivera did not have an account with the bank. (99)

Ms. Pressley further testified that she resigned from her job in May of 1974. (103) She maintained that Appellant was the only one who cashed these checks without her requiring identification number of the payees. (109) This witness also denied receiving

any payoffs from Appellant, or from anyone in the neighborhood for cashing these checks. (109) She did acknowledge that when Appellant cashed the checks, the payees could have been in the bank, since she would not have recognized any of these people. (115-117) She also admitted that a check could be cashed for a stranger if another person identified him and represented that the check was good. (117) Appellant never endorsed any check in her presence. (119)

INSPECTOR ROBERT HAZLEWOOD, employed as a Postal Inspector, first spoke to Appellant on November 26, 1974. After being advised of his constitutional rights and signing a waiver form, Appellant wrote out a statement pertaining to his financial condition. This particular statement was sent to their laboratory in Washington, D.C. for a handwriting analysis. (135) He personally observed Appellant write this statement. (135) Appellant also wrote down the names of Josephine Rodriguez and Marta Rivera. (136) He additionally had obtained signatures from these individuals. After Appellant was arrested, he denied signing the Rodriguez and Rivera checks. (140)

FRANKIE E. FRANCK, documentary analyst with the United States Postal Service, testified that he had examined appellant's handwriting, along with other samples. (156) It was his opinion that because he



found similarities between Appellant's handwriting and the endorsement on the back of the Rodriguez check, he was able to form the opinion that they were written by the same person. (161) He also compared the signature of Josephine Rodriguez with the signature on the back of the check and concluded that she did not write her name on the back of this check. After comparing Appellant's handwriting with the handwriting on the endorsement of the Rivera check, he concluded that the writer was the same person. (169) He stated that Marta Rivera's handwriting did not match the signature on the back of this check. (180-181)

This witness further testified that the samplers were first sent for fingerprint analysis and specimens had been ruined by such an examination. (187) He then admitted that the ink on the Marta Rivera check had run so that the stroke was not clear. (187) Additionally, he never found a capital "M" in Appellant's handwriting sample. (189) Finally, he stated that Appellant's handwriting style showed more variations than normal. (190) His handwriting wandered back and forth from one formation to another. (191)

APPELLANT, 62 years of age, testified that although he is presently retired, he had previously worked for the Postal Service for 31-1/2 years. (208) He had been on Route 11 for 29 years and had known Josephine Rodriguez for eight years. (209) He stated that she had lived at 500 Southern Boulevard. (209) At this location there were

108 apartments, and where Mrs. Rodriguez lived, there were about 40 apartments. Moreover, there were two Josephine Rodriguez' in the same section. Appellant did not know Marta Rivera. (210) He acknowledged that there was no such address on his route as 531 Wales Avenue. (211)

According to Appellant, Ms. Pressley's testimony that on occasion he would bring Spanish women into the bank for the purpose of helping them cash their checks was true. (212) He named Mrs. Colon, Mrs. Hernandez, and Gloria Hargrove as some of the people he took into the bank. (213)

He denied endorsing any of the checks that were introduced into evidence or receiving any money from the checks. He never forged a name and the handwriting expert was wrong. (214-215) Appellant stated that he had had no brushes with the law with the exception of a traffic violation occurring 39 years ago. (216) He has never before been subjected to any disciplinary proceedings from the Postal Department, and has received awards of notable achievement. (217)

Appellant claimed that although Josephine Rodriguez had moved to Rivington Street, she still received her checks at the Southern Boulevard address, since the Welfare Department had some question regarding her address. (22) He also stated that there were many Rivera's on his route. (239)

At the conclusion of the trial, Appellant was found guilty of both embezzlement and forgery of the Rodriguez and Rivera checks.



Because the jury did not agree on the remainder of the counts, these counts were dismissed.

ARGUMENT  
POINT I

THE GOVERNMENT'S PROOF WAS INSUFFICIENT TO  
ESTABLISH THAT APPELLANT COMMITTED THE  
CRIMES OF EMBEZZLEMENT AND FORGERY.

Even accepting the evidence that was adduced in this case in a light most favorable to the Government, it is submitted that this proof was insufficient to establish Appellant's guilt of both the forgery and the embezzlement counts.

The Government, of course, relied heavily on the handwriting expert in an attempt to show that Appellant was the one who had endorsed the back of the Rodriguez and Rivera checks. Because of the extraordinary facts in this case, the expert's conclusions must be rejected. First, the expert readily admitted that Appellant's handwriting showed more variations than normal, as his writing wandered back and forth from one formation to another. It is incredible as a matter of law that given Appellant's abrupt change of style, any expert could be so certain that the handwriting on the back of the checks was in fact Appellant's handwriting. Second, the

expert readily admitted, especially in reference to the Rivera check, that the ink was smudged and that therefore the strokes on that signature were not clear. Additionally, in regard to the Rivera check, the expert was not given a sample of the letter, capital "M", from Appellant. Coupling the lack of clarity and the incompleteness of the writing sample, it cannot be fairly concluded that the handwriting on the back of the checks was Appellant's writing. While perhaps someone else might have signed these checks, other than Rodriguez or Rivera, this does not mean that it was Appellant.

Furthermore, the record is barren of any intention on the part of Appellant to either embezzle or forge these particular checks. As to the Rodriguez check, Appellant claimed that two Josephine Rodriguez' lived in the area, and the Government at no time controverted this claim. It could very well be that the checks were inadvertently delivered to the wrong Josephine Rodriguez and whoever received the checks endorsed her name. Additionally, the Government at no time took issue with Appellant's claim that despite the fact that Mrs. Rodriguez had moved out of the area, she still came back to claim her check, since there had been some difficulty with the Welfare Department regarding her proper address. Finally, the fact that Appellant approached the Rodriguez after he was in trouble, and requested their assistance is not indicative of his consciousness of guilt. Certainly



a man has every right to attempt to extricate himself from such a situation.

As to the Rivera check, there were obviously many Riveras in the area, and notwithstanding this particular fact, it is clear that her check had been sent regularly to the wrong address. It is conceivable under these circumstances that someone, other than Appellant, could have obtained said check and could improperly have endorsed it. It must be emphasized that although the Rivera check was also cashed at the First National City Bank, there was no evidence that Appellant was the one who cashed this particular check.

In sum, therefore, it must be concluded that the Government failed to sustain its burden of proving that Appellant committed the crimes of forgery and embezzlement. Therefore, his conviction of these counts must be reversed and the indictment dismissed.

#### CONCLUSION

FOR THE ABOVE STATED REASONS, APPELLANT'S  
CONVICTION SHOULD BE REVERSED AND THE  
INDICTMENT DISMISSED.

September 1975

Respectfully submitted,

BERTRAM ZWEIBON  
Attorney for Defendant -  
Appellant  
22 East 40th Street  
New York, N.Y. 10038  
(212) OR 9-1848

LBP:wp

INDICTMENT

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

75 CR. 383

UNITED STATES OF AMERICA

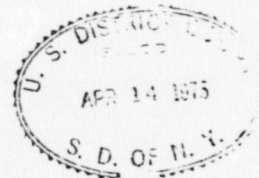
- v -

JOHN W. WATSON,

Defendant.

INDICTMENT

S. 75 Cr.



COUNT ONE

The Grand Jury charges:

On or about the 3d day of January, 1974, in the Southern District of New York, JOHN W. WATSON, the defendant, being a Postal Service employee did unlawfully, wilfully and knowingly embezzle a letter, and its contents, to wit, a United States Treasury check, which had come into his possession, and was intended to be conveyed by mail, addressed to: Josephine Rodriquez, 500 Southern Blvd., #4F, Section 7, Bronx, New York 10455.

(Title 18, United States Code, Section 1709)

COUNT TWO

The Grand Jury further charges:

On or about the 3rd day of April, 1974, in the Southern District of New York, JOHN W. WATSON, the defendant, being a Postal Service employee did unlawfully, wilfully and knowingly embezzle a letter, and its contents, to wit, an United States Treasury check, which had come into his possession, and was intended to be conveyed by mail, addressed to: Candida R. Guimaroos for children of J. Guimaroos, 323 E. 147th St., Apt. 4, Bronx, New York 10455.

(Title 18, United States Code, Section 1709.)

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LBP:wp

COUNT THREE

The Grand Jury further charges:

On or about the 1st day of May, 1974, in the Southern District of New York, JOHN W. WATSON, the defendant, being a Postal Service employee did unlawfully, wilfully and knowingly embezzle a letter, and its contents, to wit, an United States Treasury check, which had come into his possession, and was intended to be conveyed by mail, addressed to: Marta Rivera, 531 Wales Avenue, 505, Bronx, New York 10455.

(Title 18, United States Code, Section 1709.)

COUNTS FOUR THROUGH SIX

The Grand Jury further charges:

On or about the dates mentioned below, in the Southern District of New York, JOHN W. WATSON, the defendant, being a Postal Service employee did unlawfully, wilfully and knowingly embezzle letters, and their contents, to wit, City of New York Department of Social Services checks, which had come into his possession, and were intended to be conveyed by mail, addressed to: Aida Santiago, 528 Wales Avenue, Bronx, New York 10454.

<u>COUNT</u>	<u>DATE</u>
4	January 4, 1974
5	March 14, 1974
6	April 15, 1974

(Title 18, United States Code, Section 1709.)

COUNT SEVEN

The Grand Jury further charges:

On or about the 3rd day of January, 1974, in the Southern District of New York, JOHN W. WATSON, the defendant, unlawfully, wilfully and knowingly falsely made, forged and counterfeited a writing, namely, the endorsement of the payee on a check, to wit, the words "Josephine Rodriguez" on the back thereof, for the purpose of obtaining from the United States and its officers and agents a sum of money, the check being a genuine obligation of the United States, and of the

A United States Treasury Check, No. 58,628,065,  
payable to Josephine Rodriquez, 500 Southern Blvd., # 4-F,  
Section 7, Bronx, New York 10455, in the amount of \$86.20.

(Title 18, United States Code, Section 495.)

COUNT EIGHT

The Grand Jury further charges:

On or about the 1st day of May, 1974, in the  
Southern District of New York, JOHN W. WATSON, the defendant,  
unlawfully, wilfully and knowingly falsely made, forged and  
counterfeited a writing, namely, the endorsement of the  
payee on a check, to wit, the words "Marie Rivera" on the  
back thereof, for the purpose of obtaining from the United  
States and its officers and agents a sum of money, the check  
being a genuine obligation of the United States, and of  
the following tenor:

A United States Treasury check, No. 61,146,489,  
payable to Marta Rivera, 531 Wales Avenue, 505, Bronx, New  
York 10455, in the amount of \$199.20.

(Title 18, United States Code, Section 495.)

COUNT NINE

The Grand Jury further charges:

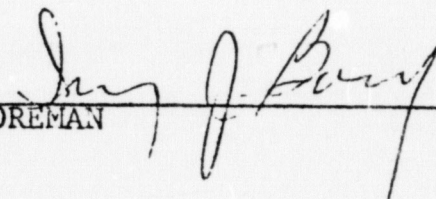
On or about the 3d day of April, 1974, in the  
Southern District of New York, JOHN W. WATSON, the defendant,  
unlawfully, wilfully and knowingly and with intent to defraud  
the United States, uttered and published as true and caused  
to be uttered and published as true, a false, forged and  
counterfeited writing, namely, the endorsement of the payee  
on a check, knowing the same to be false, forged and counter-  
feited, the check being a genuine obligation of the United  
States, and of the following tenor:

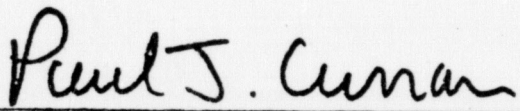


LBP:wp

A United States Treasury Check No. 63,833,893,  
payable to Candida R. Guimaroos for children of J. Guimaroos,  
823 E. 147 St., Apt. 4, Bronx, New York 10455, in the  
amount of \$351.20.

(Title 18, United States Code, Section 495.)

  
FOREMAN

  
PAUL J. CURRAN  
United States Attorney

A-4

CRIMINAL DOCKET  
UNITED STATES DISTRICT COURT

DOCKET SHEETS

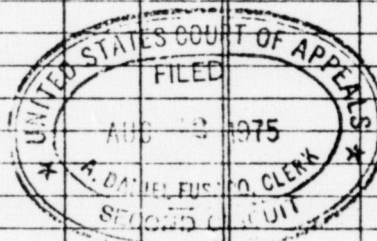
D. C. Form No. 100 Rev.

JUDGE GAGLIARDI

75 Crim. 833

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	For U. S.:
vs.	Lawrence B. Pedowitz, AUSA.
JOHN W. WATSON	791-1917
	For Defendant:

(06) STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 2 mailed ✓	Clerk				
J.S. 3 mailed ✓	Marshal				
Violation	Docket fee				
Title 18					
Sec. 1709,495					
Mail embez.(Cts.1-6)					
Forg. of Govt. checks.(Cts.7-9)					
( Nine Counts)					



DATE	PROCEEDINGS
4-14-75	Filed indictment.( Related to 75Cr110 and referred to Gagliardi J.)
4-28-75	Deft. present(atty. present) entered plea of not guilty. Case assigned to Judge Gagliardi and a related case. 10 days for motions. Bail cont'd, as fixed. Released on own recognizance. Pierce, J.
5-21-75	Filed CJA 21 appointment of Samuel Alfonso, Interpreter. mailed copies CJA Gagliardi, J.
5-21-75	Filed CJA 21 approval for payment of fees of interpreter. mailed copies CJA Gagliardi, J.
-20-75	Before Judge Gagliardi jury trial begun.
-21-75	Trial cont'd.
-22-75	Trial cont'd, and concluded. Jury verdict ct. 1 guilty, ct.3-guilty, ct. 7 guilty, ct 8 guilty. Pre-sentence investigation ordered. For sentence 7-8-75 at 10. Deft. R.O.R. until date of sentence. Counts 2,4,5,6 & 9 dismissed on Govt.'s motion. Gagliardi, J.



DATE	PROCEEDINGS
6-17-75	John Watson- filed CJA 21 appointment of Peter Tytell 116 Fulton St, NYC (mailed copies CJA Clerk) Gagliardi, J.
6-17-75	John Watson0 filed CJA 21 approval for payment of fees of Peter Tytell. (mailed copies CJA Clerk) Gagliardi, J.
07-10-75	John W. Watson - filed notice of appeal from judgment of 7-8-75. mailed copies to U.S. Atty. and deft. 7-10-75. "Leave to file notice of appeal without payment of statutory fee." Gagliardi, J.
7-08-75	JOHN W. WATSON- filed JUDGMENT (atty. present) deft. is committed to the custody of the Atty. Gen'l. for imprisonment for a period of THREE (3) MONTHS on each of counts 1, 3, 7 & 8 concurrently. Execution of sentence is suspended and deft. is placed on pro- bation for a period of EIGHTEEN (18) MONTHS, subject to the standing probation order of this Court. Gagliardi, J. issued all copies.
7-15-75	Filed deft. 's request to charge.
7-15-75	Filed Govt. 's request to charge.
7-15-75	Filed Govt. 's suppl. request to charge.

A TRUE COPY  
RAYMOND E. BURGHARDT, Clerk  
*G. E. Thompson*  
Deputy Clerk

A-6

2

COURT'S CHARGE

304

1 elrm 1

2 CHARGE OF THE COURT

3 THE CLERK: The Court is about to charge the jury.  
4 Anyone that wishes to leave may do so now. Once the charge  
5 is started no one will be permitted to leave or enter the  
6 Court.

7 Marshal, will you please lock the door.

8 THE MARSHAL: It is locked.

9 THE COURT: All right. It seems like a little bit  
10 of a superfluous charge because there is no one in here anyway.  
11 The importance of it is that you will be distracted from  
12 people coming back and forth, when I am going to charge you  
13 on the law.

14 You are about to enter upon your final duty, which  
15 is to decide the fact issues in the case. As I told you in  
16 my instructions in the beginning of the trial, your principal  
17 function during the taking of testimony would be to listen  
18 carefully and observe each witness as he testified, and it  
19 has been evident to me and as counsel have pointed out, you  
20 have faithfully discharged that duty.

21 We have now reached the point in the case where  
22 all the evidence has been presented and the closing arguments  
23 of the lawyers have been made. And shortly after I have  
24 completed my explanation to you as to the applicable law,  
25 you will retire to deliberate upon your verdict. You are to

A-7



1 elrm 2

2 perform your final duty in an attitude of complete fairness  
3 and impartiality. You are to appraise the evidence calmly  
4 and deliberately, and as was emphasized by me at the time of  
5 your selection as jurors, without bias or prejudice with  
6 respect to either the Government or the defendant as parties  
7 to this controversy.

8 The fact that the prosecution is brought in the  
9 name of the United States of America entitles the Government  
10 to no greater consideration than that accorded to any other  
11 party to the litigation. And by the same token, it is  
12 entitled to no less consideration. All parties stand as  
13 equals before the bar of justice, and as I said, your final  
14 role is to pass upon and decide the fact issues in this  
15 case.

16 You, the members of the jury, are the sole and  
17 exclusive judges of the facts. You pass upon the weight of  
18 the evidence; you determine the credibility of the witnesses;  
19 you resolve such conflicts as there may be in the testimony,  
20 and you draw whatever reasonable inferences there are to be  
21 drawn from the facts as you have determined them.

22 My function at this point is to instruct you upon  
23 the law, and it is your duty to accept these instructions  
24 and apply them to the facts as you determine them. The  
25 logical result of that application will be your verdict in

A. 8

2 this case.

3 With respect to any fact matter, it is your  
4 recollection and yours alone that governs. Anything that  
5 counsel either for the Government or for the defendant may  
6 have said with respect to any matters in evidence, that is,  
7 as to any factual matter, whether stated in a question, in  
8 argument, or in summation, is not to be substituted for your  
9 own independent recollection. And so, too, anything that the  
10 Court may have said during the progress of the trial with  
11 respect to a fact matter or may say during the course of  
12 these instructions is not to be taken in substitution for  
13 your own independent recollection, which governs at all times.

14 Before we consider the precise charges in the  
15 indictment, a number of preliminary observations are in order.  
16 In determining the facts you should not be influenced by  
17 rulings that the Court may have made during the trial. These  
18 rulings dealt with matters of law and not questions of fact.  
19 Counsel for both sides had not only the right, but indeed,  
20 the duty to press whatever legal objections they believed  
21 exist as to the admission of offered evidence. The Court's  
22 rulings on objections made either by the attorney for the  
23 Government or the attorney for the defendant are not to be  
24 considered by you.

25 Of course, as I told you at the outset, where I

A 9



1 elrm 4

2 have sustained an objection to a question, you must not  
3 speculate on what the witness would have said had he been  
4 permitted to answer, or may you draw any inference from the  
5 wording of the question for that it was asked. Similarly,  
6 when any testimony has been stricken, it is not evidence  
7 and you are bound to disregard it.

8           You must remember, however, that in ruling on  
9 objections, the Court is deciding questions of law and not  
10 questions of fact. I recognize, as everyone in my position  
11 must recognize, that a judge can have a great deal of  
12 influence on a jury. I want you to understand that I have  
13 no opinion with respect to the guilt or innocence of this  
14 defendant. If you do think that you have gleaned some  
15 indication as to my opinion of the case either from any  
16 questions I may have asked or from my expression or tone of  
17 voice, disregard it entirely. The Court has no opinion as to  
18 the veracity or credibility of the witnesses or the merits  
19 of the case. You are judges of the facts and you are the  
20 sole judges of the guilt or innocence of this defendant. I  
21 am merely a judge of the law. And the fact issues must be  
22 decided by you solely and only within the framework of the  
23 evidence and the principles of law that apply.

24           And finally, please do not single out any one  
25 instruction of mine as stating the law alone; take them all

A-10

into account after you have heard them all.

You are to consider only the evidence in this case, and that evidence consists of the sworn testimony of the witnesses, the exhibits which have been received in evidence, the facts which have been stipulated, and the facts of which I have taken judicial notice as to certain days of the week and what day of the week certain dates fell on, and the presumptions which I will tell you about in these instructions, such as the presumption of innocence.

But while you are to consider only the evidence in the case, you are not limited to the bald statements of the witnesses. On the contrary, you are permitted to draw from the facts which you find have been proved, such reasonable inferences as seem justified to you in the light of your own experience.

An inference is merely another word for a conclusion which reason or common sense leads you to draw from the facts that have been proved here. In considering the evidence you must remember, as I told you at the outset of the trial, that the indictment is only a formal method of accusing a defendant of the crime charged, and it itself is not evidence against the defendant, nor is any weight to be given to the fact that an indictment has been returned against the defendant.

A-11



2 Generally speaking there are two types of evidence  
3 from which a jury may properly find the truth as to the facts  
4 in the case. One is direct evidence, such as the testimony  
5 of an eye witness; somebody who saw or heard something done  
6 or said. And the other is indirect, or circumstantial,  
7 evidence, the proof of a chain of circumstances pointing to  
8 the existence or non-existence of certain facts.

9 Generally, the law makes no distinction between  
10 direct and circumstantial evidence, but simply requires that  
11 the jury find the facts in accordance with all the evidence  
12 in the case, both direct and circumstantial.

13 We have a common example that we use in this  
14 court as to the difference between direct or circumstantial  
15 evidence. Assume as is the case, that when you came into  
16 court this morning, it was a nice bright, sunshiny day, as  
17 it was, and there were no clouds in the sky. That is direct  
18 evidence. You could see that it was a clear day, not  
19 raining, it was a pleasant day, not raining and no clouds  
20 on the horizon. That is as I say direct evidence.

21 Let's assume further that we were in one of our  
22 modern courtrooms that has no windows in it. And we were on  
23 the first floor of the court house, just off the entrance to  
24 the court house. And assume that it was such a day as we  
25 have had today. And assume that after we were in that court

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1 elrm 7

2 room for an hour, hour and a half, we could not see outside  
3 and see what happened to the weather, but assume that somebody  
4 came in and his clothes are wet and his hair is dripping, and  
5 assume that a minute or two later someone else came in and  
6 they have an umbrella in their hand and it is dripping water,  
7 and a couple of minutes later another spectator comes in and  
8 they have a hat in their hand and raincoat on and that is  
9 dripping water. You could assume from those facts that it  
10 was raining outside, even though when you came in this  
11 morning it was a nice, bright, sunshiny day. That is called  
12 circumstantial evidence, the chain of circumstances which  
13 leads to the conclusion that a fact either exists or does not  
14 exist.

15 And as I told you before, the law makes no  
16 distinction between direct and circumstantial evidence, only  
17 requires that you find the facts in accordance with all the  
18 evidence in the case.

19 Now, as I have told you before, the indictment was  
20 no evidence in the case, and the defendant has entered  
21 a plea of not guilty to the charges in the indictment. Thus,  
22 the burden is on the prosecution to prove guilt beyond a  
23 reasonable doubt. This burden never shifts to the defendant,  
24 because the law never imposes on a defendant in a criminal  
25 case the burden or duty of calling any witnesses or producing

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2 any evidence.

3 As I told you during your selection as jurors and  
4 in my instructions at the commencement of the trial, the law  
5 presumes a defendant to be innocent of crime. Thus, a  
6 defendant, although accused, begins the trial with no  
7 evidence against him and the law permits nothing but legal  
8 evidence presented before you as jurors to be considered in  
9 support of any charges against a defendant. The presumption  
10 of innocence remains with the defendant throughout the trial  
11 and your deliberations until such time, if ever, that the  
12 jury is satisfied of guilt beyond a reasonable doubt.

13 Thus, the presumption of innocence alone is  
14 sufficient to acquit a defendant unless and until, after a  
15 careful and impartial consideration of all the evidence in  
16 the case, you as jurors are unanimously convinced of guilt  
17 beyond a reasonable doubt.

18 The indictment in this case contains nine counts,  
19 or charges. A separate crime or offence is charged in each  
20 count of the indictment. Each offense and the evidence  
21 pertaining to it should be considered separately. The fact  
22 that you may find the defendant guilty or not guilty of one  
23 of the offenses charged should not control your verdict as  
24 to any other offense charged.

25 This has been a short trial, and counsel have

A 14

adequately reviewed the evidence with you and, therefore, I see no sense in my reviewing it with you. I would like for perhaps your assistance here, however, to review the witnesses who appeared and the order in which they appeared.

The first witness was Candida Guimaraes. The second witness was Josephine Rodriguez, who was followed on the stand by Filomena Jiminez. The next witness was Marta Rivera. The next witness was Hymel Freidmal, the assistant manager of the Hub Station. The next witness was Joseph Esposito, Post Office letter carrier who had Route No. 5.

The next witness was Pamela Pressley, former head teller at the First National City Bank, and following that the Government read four stipulations which had been entered into between the Government and defense counsel stipulating that if certain witnesses were called they would testify as set forth in those stipulations.

The next witness was Robert Hazelwood, who was followed by Mr. Frankie Franck, and the last Government witness we had this morning was Mr. Joseph Sambuco. Following that the Government rested its case, and then the defendant took the stand and then both sides rested, and that was the total of the witnesses who appeared before you and certain of the evidence that was presented to you.

With that behind us, I am going to read to you the

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1 elrm 10

2 law that applies to each of these counts and read to you the  
3 applicable provisions, or all the provisions of the indict-  
4 ment.

5 The first six counts, counts 1 through 6, charge  
6 the defendant with violation of Section 1709 of Title 18 of  
7 the United States Code, which provides in pertinent part as  
8 follows:

9 "Whoever, being a Postal Service employee, embezzles  
10 any letter which comes into his possession intended to be  
11 Conveyed by mail," commits a crime.

12 Counts 1 through 6 read as follows:

13 "The grand jury charges in count 1, on or about  
14 the 3rd day of January, 1974 in the Southern District of New  
15 York," and for our purposes that includes the Counties of  
16 Manhattan and the Bronx, "John W. Watson, the defendant,  
17 being a Postal Service employee, did unlawfully, wilfully  
18 and knowingly embezzle a letter and its contents, to wit:  
19 a United States Treasury check which had come into his  
20 possession and was intended to be conveyed by mail, addressed  
21 to Josephine Rodriguez, 500 Southern Boulevard, No. 4F,  
22 Section 7, Bronx, New York 10455."

23 Count 2: "The grand jury further charges on or  
24 about the 3rd day of April, 1974 in the Southern District of  
25 New York, John W. Watson, the defendant, being a Postal

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1 elrm 11

2 Service employee did unlawfully, wilfully and knowingly  
3 embezzle a letter and its contents, to wit: a United States  
4 Treasury check which had come into his possession and was  
5 intended to be conveyed by mail addressed to Candida R.  
6 Guimaraes for children of J. Guimaraes, 823 East 147th  
7 Street, Apartment 4, Bronx, New York 10455."

8 Incidentally, you will be entitled to have the  
9 indictment with you in the jury room, and I am reading it to  
10 you now to help you in connection with my instructions to you.

11 Count 3: "The grand jury further charges on or  
12 about the 1st day of May, 1974, in the Southern District of  
13 New York, John W. Watson, the defendant, being a Postal  
14 Service employee, did unlawfully, wilfully and knowingly  
15 embezzle a letter and its contents, to wit: a United States  
16 Treasury check which had come into his possession and was  
17 intended to be conveyed by mail addressed to Marta Rivera,  
18 531 Wales Avenue, 505, Bronx, New York 10455."

19 Counts 4 through 6: "The grand jury further  
20 charges on or about the dates mentioned below in the Southern  
21 District of New York, John W. Watson, the defendant, being a  
22 Postal Service employee, did unlawfully, wilfully and know-  
23 ingly embezzle letters and their contents, to wit: City of  
24 New York Department of Social Services checks which had come  
25 into his possession and were intended to be conveyed by mail

A. 7



1 elrm 12

2 addressed to Aida Santiago, 528 Wales Avenue, Bronx, New York  
3 10454."

4 Count 4, date January 4, 1974. Count 5, March 14,  
5 1974. Count 6, April 15, 1974. I have broken this down  
6 because the law applicable to the first six counts and to  
7 counts 7 and 8 and to count 9 are different. I have read to  
8 you the first six counts.

9 The fact that I use the words, "In order to  
10 convict the defendant on any one of the counts, you must find  
11 beyond a reasonable doubt ..." I could word the reverse of  
12 that, before you convict you must find, an inference should  
13 not be taken by you that I have any opinion whatsoever as to  
14 what you should do.

15 But in order to convict the defendant of any one of  
16 counts 1 through 6, you must find beyond a reasonable doubt  
17 the following four elements:

18 First, that on or about the date set forth in the  
19 count you are considering, the defendant was a United States  
20 Postal Service employee.

21 Second, that on or about that date a letter  
22 addressed as set forth in the count in the indictment you are  
23 considering came into the defendant's possession.

24 Third, that this letter was intended to be  
25 conveyed by mail, and fourth, that the defendant Watson

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1 elrm 13

2 unlawfully, knowingly and wilfully embezzled this letter or  
3 its contents on or about the date set forth.

4 I don't know that there is any need for me to  
5 enlarge upon the first element, namely, that you must find  
6 that the defendant was a United States Postal Service  
7 employee at the time.

8 As to the second element, whether the letter came  
9 into his possession, in connection with this element,  
10 possession, the word has its common everyday meaning, and  
11 that simply is to have something within your control, and the  
12 law recognizes two kinds of possession: actual and con-  
13 structive.

14 A person who knowingly has direct, physical  
15 control over a thing at a given time is then in actual  
16 possession of it. A person who, though not in actual  
17 possession, has both the power and the intention at a given  
18 time to exercise dominion and control over it at this time or  
19 either directly or through another person is then in  
20 constructive possession of it.

21 In addition, the law presumes that a letter shown  
22 to be properly addressed, stamped and mailed is delivered in  
23 the due course of mailing to the addressee. The parties have  
24 stipulated that the checks herein, if certain witnesses were  
25 called, they would testify that certain checks were mailed

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1 elrm 14

2 to a certain addressee. With respect to this element, you  
3 must also consider any evidence in this case that the checks  
4 in due course would have been delivered to the Hub Station  
5 and then counted as testified to herein.

6 The word "embezzlement." A person is said to  
7 embezzle the property of another if he is entrusted with it  
8 or if it comes into his possession by virtue of some office  
9 or position of trust which he occupies and if he wrongfully  
10 and intentionally takes it or its contents or wilfully  
11 misappropriates its contents.

12 Later on in these instructions, because I have used  
13 the words "knowingly" and "wilfully" in other respects, I  
14 will explain to you what the words "knowingly" and "wilfully"  
15 mean.

16 That is on the first six counts.

17 Counts 7 and 8 charge the defendant with violating  
18 Section 495 of Title 18 of the United States Code, and that  
19 provide in pertinent part as follows:

20 "Whoever falsely makes, alters, forges or confers any  
21 writing for the purpose of obtaining or receiving from the  
22 United States or any officers or agents thereof any sum of  
23 money," commits a crime.

24 Counts 7 and 8 read as follows: Count 7: "The  
25 grand jury further charges: On or about the 3rd day of

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1 elrm 15

2 January, 1974, in the Southern District of New York, John W.  
3 Watson, the defendant, unlawfully, wilfully and knowingly  
4 falsely made, forged and counterfeited a writing, namely, the  
5 endorsement of a payee on the check, to wit, the word  
6 "Josephine Rodriguez" on the back thereof for the purpose of  
7 obtaining from the United States and its officers and agents  
8 a sum of money, the check being a genuine obligation of the  
9 United States and of the following tenor: a United States  
10 Treasury check No. 58628065 payable to Josephine Rodriguez,  
11 500 Southern Boulevard, No. 4F, Section 7, Bronx, New York  
12 14055, in the amount of \$86.20."

13 Count 8: "The grand jury further charges: On or  
14 about the 1st day of May, 1974 in the Southern District of  
15 New York, John W. Watson, the defendant, unlawfully, wilfully  
16 and knowingly falsely made, forged and counterfeited a writing,  
17 namely, the endorsement of a payee on a check, to wit, the  
18 word "Marta Rivera" on the back thereof for the purpose of  
19 Obtaining from the United States and its officers and agents  
20 a sum of money, the check being a genuine obligation of the  
21 United States in the following tenor: a United States  
22 Treasury check No. 6146864, payable to Marta Rivera, Wales  
23 Avenue, Bronx, New York 10455, in the amount of \$199.20."

24 In order to find the defendant guilty of any of the  
25 forgery counts, you must find beyond a reasonable doubt the

A.21



1 elrm 16

2 following three elements: First, that the check, which is  
3 the subject of that particular count, was a genuine obligation  
4 of the United States. Second element, that on or about the  
5 date set forth in that count, the defendant wilfully and  
6 knowingly endorsed the check by writing the name of the  
7 payee on the back of the check; and three, that the  
8 endorsement was a forgery.

9 In connection with the first element, I charge you  
10 that the checks herein were genuine obligations of the  
11 United States. I will charge you later on with respect to  
12 the word "knowingly" and "wilfully" endorsing the check  
13 by writing the name of the payee on the back.

14 With respect to the third element, forgery, the  
15 writing of a payee's endorsement on a genuine United States  
16 Treasury check by a person other than the payee, if done  
17 wilfully and without authority and with intent to defraud,  
18 is a forgery within the terms of this statute. The  
19 Payee, of course, is the person to whom the check is made  
20 payable.

21 The final count, count 9, charges the defendant  
22 with violating Section 495, Title 18, United States Code,  
23 which provides in pertinent part as follows: "Whoever  
24 utters or publishes as true any such false, forged, altered  
25 or counterfeit writing with intent to defraud the United States,

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1 elrm 17

2 knowing the same to be false, altered, forged or converted,"  
3 commits a crime.

4 And count 9 reads as follows: "The grand jury  
5 further charges on or about the 3rd day of April, 1974, in  
6 the Southern District of New York, John W. Watson, the  
7 defendant, unlawfully, wilfully and knowingly and with intent  
8 to defraud the United States, uttered and published as true  
9 and caused to be uttered and published as true namely the  
10 endorsement of a payee on a check knowing the same to be false,  
11 forged and counterfeited, the check being a genuine  
12 obligation of the United States and of the following tenor:  
13 United States Treasury check No. 65733893, payable to Candide  
14 Guimaraes, for children of J. Guimaraes, 831 East 147th  
15 Street, Apartment 4, Bronx, New York, 10455, in the amount  
16 of \$351.20."

17 In order to find the defendant guilty on count 9  
18 you must find beyond a reasonable doubt, 1, that the check  
19 was a genuine obligation of the United States. I charge you  
20 with respect to that that the check herein was a genuine  
21 obligation of the United States.

22 2. That the endorsement on the back of the check  
23 is a forgery.

24 3. That on or about April 3, 1974 the defendant  
25 wilfully and knowingly uttered the check knowing this

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endorsement was a forgery, and

4. That the defendant intended to defraud the United States.

In connection with the second element, that is, that the endorsement on the back of the check is a forgery, I have already instructed you with respect to the meaning of the term "forgery" as it relates to counts 7 and 8 and the same instructions that I gave you as to that element are applicable to this count.

To "utter," the word, phrase, "utters or publishes as true," as used in the statute means to make or attempt any use of a written or printed instrument or document such as an attempt to place a check in circulation whereby or in connection with which some assertion, representation or claim is made to another in some way or manner, directly or indirectly, expressly or impliedly that belies the conduct that the check is genuine.

The evidence in this case need not be established that the United States or anyone was actually defrauded, but only that the accused acted wilfully and with the intent to defraud. To act with intent to defraud means to act with the specific intent to deceive or cheat, ordinarily for the purpose of either causing some financial loss to another or bringing about some financial gain to oneself.

A 24

1 elrm 19

2 I have used the words "knowledge" and "intent,"  
3 and "knowingly" and "wilfully."

4 An act is done knowingly if it is done voluntarily  
5 and purposely and not because of mistake, accident, neglect  
6 or other innocent reason. Knowledge and intent exist in the  
7 mind.

8 As we all realize, it is not possible to open up  
9 a person's head and find out what goes on within his mind.  
10 The only way you have for arriving at a decision on the  
11 question of knowledge and intent is for you to take into  
12 consideration all the facts and circumstances shown by the  
13 evidence and to determine from all such facts and circum-  
14 stances whether the requisite knowledge and intent were  
15 present at the time in question. Direct proof is unnecessary.  
16 Knowledge and intent may be inferred from all the surrounding  
17 circumstances.

18 At the beginning of my charge I told you that a  
19 defendant was presumed innocent, that the presumption of  
20 innocence remains until and unless the jury is unanimously  
21 satisfied of guilt beyond a reasonable doubt. In describing  
22 the elements of the various offenses charged in the indictment,  
23 I told you that the Government must establish each of those  
24 elements by proof beyond a reasonable doubt. And the  
25 question naturally arises, what is a reasonable doubt.

A.25



1 elrm 20

2 The words almost define themselves. That there is  
3 a doubt founded in reason and arising out of the evidence or  
4 lack of evidence. It is a doubt which a reasonable person  
5 has after carefully considering all the evidence. A reason-  
6 able doubt is not a vague or speculative or imaginary doubt.  
7 It is not caprice, whim or speculation. It is not an excuse  
8 to avoid the performance of an unpleasant duty. It is not  
9 sympathy for a defendant.

10 A reasonable doubt is a doubt which appeals to your  
11 reason, ~~your~~ common sense, your experience, and your judg-  
12 ment. It is a doubt which would cause a reasonable man or  
13 woman like yourselves to hesitate to act in relation to your  
14 own important private affairs. Mere suspicion will not  
15 justify conviction. Suspicion is not a substitute for  
16 evidence, nor is it sufficient to convict if you find that  
17 the circumstances merely render an accused probably guilty.

18 On the other hand, it is not required that the  
19 Government must prove guilt beyond all possible doubt, but  
20 the proof must be of such convincing character that you would  
21 be willing to rely and act on it in the important affairs  
22 of your own life.

23 In sum, a reasonable doubt exists whenever, after  
24 a careful and impartial consideration of all the evidence  
25 before you, you can candidly and honestly state that you do

A 26

1 elrm 21

2 not have a binding conviction that the defendant is guilty of  
3 the charge.

4 If you find that a person, when questioned con-  
5 cerning criminal allegations, voluntarily and intentionally  
6 made any deliberate false statement of an exculpatory  
7 character, you may consider such false exculpatory statement  
8 as circumstantial evidence from which consciousness of guilt  
9 or criminal intent may be inferred. Whether or not evidence  
10 as to a defendant's explanation or statement points to a  
11 consciousness of guilt and the significance, if any, to be  
12 attached to any such evidence, are matters for determination  
13 by you.

14 Getting back to what I told you at the beginning  
15 of the trial, that one of your most important functions  
16 would be to assess the credibilities of the witnesses who  
17 testified, and as I remind you again, you are the sole  
18 judges of the credibility of the witnesses, and that you and  
19 you alone must determine what weight their testimony deserves,  
20 in my instructions at the start of the case I gave you some  
21 guidelines I thought might be helpful to you as you listened  
22 to the testimony. I am going to repeat and expand upon those  
23 instructions at this point.

24 Primarily, you are to understand that you should  
25 not be influenced by the mere number of witnesses called by

A.27



1 elrm 22

2 either side. The weight of the evidence is not necessarily  
3 determined by the number of witnesses testifying on either  
4 side. Rather, you should consider all the facts and circum-  
5 stances in evidence to determine where the truth lies in  
6 assessing credibility. You should carefully scrutinize the  
7 testimony given, the circumstances under which each witness  
8 has testified, and every matter in evidence which tends to  
9 indicate whether the witness is worthy of belief.

10 The degree of credibility to be given a witness  
11 should be determined by his demeanor, the relationship to  
12 the controversy and the parties, the bias or impartiality,  
13 the reasonableness of his statements, and the attendant  
14 circumstances in the case and the extent to which, if at all,  
15 each witness is either supported or contradicted by other  
16 evidence.

17 How did the witness impress you? Did his version  
18 appear straightforward and candid or did he try to hide some  
19 of the facts? Is there a motive to testify falsely?

20 In passing upon the credibility of a witness you  
21 may take into account inconsistencies or contradictions as  
22 to material matters in his own testimony or any conflict with  
23 that of another witness; also any inconsistencies or omissions  
24 in prior testimony or any prior statement of material matters  
25 as to which he may have testified upon the trial.

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1 elrm 23

2 Inconsistencies or discrepancies in the testimony  
3 of a witness or between the testimony of different witnesses  
4 may or may not cause a jury to discredit such testimony. Two  
5 or more persons witnessing an incident or a transaction may  
6 see or hear it differently and innocent misrecollection,  
7 like failure of recollection is not an uncommon experience.  
8 A witness may be inaccurate, contradictory or untruthful in  
9 some respects and yet be entirely credible in the essentials  
10 of his testimony.

11 In weighing his effect of a discrepancy, consider  
12 whether it pertains to a matter of importance or an unim-  
13 portant detail and whether the discrepancy results from  
14 innocent error or wilfull falsehood.

15 If you find that any witnesses testified falsely,  
16 you can do any one of two things: You can either reject all  
17 of that witness' testimony on the ground that it is all  
18 tainted by falsehood and that none of it is worthy of belief,  
19 or you can accept that part which you believe to be credible  
20 and reject only that part which you believe to be tainted by  
21 falsehood.

22 Should you find that all or any part of a particular  
23 witness' testimony was false, you may not, of course, infer  
24 that the opposite of that testimony is the truth until there  
25 is other evidence in the case to that effect, and any



1 elrm 24

2 testimony rejected by you as false is no longer in the case  
3 insofar as any finding that you may make is concerned.

4 You will recall that I told you that an inference  
5 was a conclusion that common sense led you to determine from  
6 the facts which have been proved. Thus, a finding of fact  
7 may not be established merely by a negative inference arising  
8 from your disbelief and rejection of any testimony.

9 In passing upon credibility, the ultimate question  
10 for you to decide is, did the witness tell the truth here  
11 before you. It is for you to say whether his testimony at  
12 this trial is truthful in whole or in part in the light of  
13 his demeanor, explanations, and all the evidence in the case.

14 I told you at the outset of the trial that a  
15 defendant is not required to present any proof or to testify  
16 or present any evidence in his own behalf. When, as here,  
17 a defendant does testify, it is your function as jurors to  
18 assess his credibility in the same manner as you assessed the  
19 credibility of any other witness.

20 You will recall I instructed you that one factor  
21 to be considered in judging credibility was any interest a  
22 witness may have in the outcome of the trial. Obviously,  
23 every defendant has a personal interest in the outcome of a  
24 case. In appraising his credibility, you may take the fact  
25 of interest into consideration. However, it by no means

A. 29

1 elrm 25

2 follows that simply because a person has a substantial interest  
3 in the result he is not capable of telling a straightforward  
4 or truthful story. It is for you to decide to what extent,  
5 if at all, his interest has affected his testimony.

6 Ordinarily the rules of evidence do not permit  
7 witnesses to testify as to opinions or conclusions. The  
8 exception to this rule exists as to those whom we call expert  
9 witnesses. Witnesses who by education and experience have  
10 become expert in some art, science, profession or calling,  
11 may state an opinion as to relevant and material matters in  
12 which they profess to be expert, and may also state their  
13 reasons for the opinion.

14 Where the genuineness of handwriting is an issue,  
15 any proved or admitted handwriting of a person may be received  
16 in evidence to be used as a specimen for comparison with the  
17 handwriting in dispute.

18 A witness claiming special qualifications as an  
19 expert on handwriting has testified as to certain handwriting  
20 in dispute. The handwriting expert may state his opinion as  
21 to whether documents or signatures in evidence were written  
22 by the same person and whether they are genuine, disguised  
23 or altered by comparing the handwriting in dispute about a  
24 proven specimen.

25 You have the right to determine the weight to be

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1 elrm 26

2 given such expert testimony. You should consider the expert  
3 testimony received in this case and give it such weight as  
4 you may think it deserves. If you should decide that the  
5 opinion of an expert witness is not based upon sufficient  
6 education or experience, or if you should conclude that the  
7 reasons given in support of the opinion are not sound or that  
8 the opinion is outweighed by other evidence, you may dis-  
9 regard the opinion entirely.

10 With respect to an unavailable witness, namely, the  
11 absence of ~~Aida~~ Aida Santiago, I charge you that she was equally  
12 unavailable to both sides and no inferences should be drawn  
13 by you concerning her failure to testify or any testimony she  
14 might have given.

15 In your deliberations please do not discuss the  
16 question of possible punishment. That is a matter that rests  
17 on my conscience alone, because the judge and the judge alone  
18 is the one who has the obligation of imposing sentence when  
19 and if guilt is determined. If you do discuss it among  
20 yourselves, then you are encroaching upon my function and I  
21 ask you not to do it. Your function is to consider the facts  
22 and to determine the facts, and my function is to pass upon  
23 the law, and in the event of conviction, to impose sentence.

24 If you find on all the evidence that the evidence  
25 respecting the defendant leaves a reasonable doubt as to his

1 elrm 27

2 guilt, you should not hesitate for a moment to return a  
3 verdict of not guilty as to the defendant.

4 On the other hand, if you should find beyond a  
5 reasonable doubt that the law has been violated as charged,  
6 you should not hesitate because of sympathy or because of any  
7 other reason to render a verdict of guilty.

8 The verdict must represent the considered judgment  
9 of each juror. In order to return a verdict it is necessary  
10 that each juror agree thereto. Your verdict must be  
11 unanimous. It is your duty as jurors to consult with one  
12 another and to deliberate with a view to reaching agreement  
13 if you can do so without violence to individual judgment.  
14 Each of you must decide the case for yourself. But do so  
15 only after an impartial consideration of the evidence with  
16 your fellow jurors.

17 In the course of your deliberations do not  
18 hesitate to reexamine your own views and change your opinion  
19 if convinced it is erroneous, but do not surrender your honest  
20 conviction as to the weight or effect of evidence solely  
21 because of the opinion of your fellow jurors or for the mere  
22 purpose of returning a verdict. You are not partisans, you  
23 are judges of the facts. Your sole interest is to ascertain  
24 the truth from the evidence in the case.

25 As I have indicated to you, you may have with you

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1 elrm 28

2 the indictment here. I have also prepared for you a form of  
3 verdict, and when you report your verdict you will report it,  
4 we the jury unanimously find the defendant and count 1, and  
5 I have left it blank on each count, and whatever your verdict  
6 is, you will report it that way.

7 You will note by the oath about to be taken by the  
8 marshal that you are not to communicate with anyone touching  
9 upon the merits of this case; you are not to communicate with  
10 me, other than in a writing signed by your foreman or by one  
11 or more ~~members~~ of your jury, and the Court will not  
12 communicate with you with respect to the merits of this case  
13 or with respect to anything with respect to this case other  
14 than in writing or orally here in open court.

15 You are never to reveal to anyone, not even to the  
16 Court, how you stand numerically or otherwise with respect to  
17 any count here unless and until you have reached a unanimous  
18 verdict.

19 I will give counsel an opportunity to make any  
20 exceptions or requests with respect to my charge, which they  
21 have a right to do, at the side bar.

22 (At the side bar.)

23 MR. ZWEIBON: I would object to the indictment  
24 going to the jury room. That is the only thing I have. I  
25 have no objection to the charge.

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1 elrm 29

2 THE COURT: No, exceptions, no requests?

3 MR. ZWEIBON: No, your Honor.

4 MR. PEDOWITZ: No, your Honor. Fine charge.

5 (In open court.)

6 THE COURT: You may have for your consideration  
7 the exhibits, they will be available to you and if you do  
8 require them all you have to do is send a note, and we will  
9 send them in to you, such exhibits as were admitted into  
10 evidence.

11 For the two alternate jurors, do you have any  
12 belongings in the jury room? You do not. We are happy that  
13 everybody is together here and unfortunately we are going to  
14 have to separate you from the rest of the jurors, though.  
15 Would you just step off to the side and sit in the front row,  
16 we will excuse you after the jurors have retired to  
17 deliberate.

18 Would you swear the marshal.

19 (At 3:01 p.m. the marshal was duly sworn.)

20 (At 3:01 p.m. the jury retired to deliberate.)

21 THE COURT: As to the two alternate jurors, I want  
22 to express my appreciation to you for your attendance here.  
23 I know how difficult it is to sit all through a case and then  
24 be taken away before you get the opportunity to discuss it  
25 with your fellow jurors, but your function was most important

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1 elrm 30

2 and it was most important that we have you here. As a matter  
3 of fact, I almost started this case yesterday afternoon by  
4 excusing one of the jurors who was late and one of you would  
5 have been put in the breach there.

6 Thank you very much for your attention here. I  
7 appreciate your cooperation to the Court. If you will return  
8 down to the central jury room they will give you further  
9 instructions there. Good luck to both of you.

10 (Two alternates were discharged and left the  
11 courtroom.)

12 THE COURT: You have the exhibits all together,  
13 gentlemen? Is it all right if the jury requests the  
14 exhibits for us to send them into the jury without asking any  
15 further permission from you gentlemen?

16 MR. ZWEIBON: Fine with the defense.

17 MR. PEDOWITZ: Certainly.

18 THE COURT: I suggest that you stand by and if you  
19 are going anyplace more than five minutes away -- no matter  
20 where you are going, let Mr. Matrice know so that he can call  
21 you in if he has any questions from the jury.

22 (Recess)

23 (3:30 p.m.)

24 THE COURT: I received the following note from the  
25 jury: "1. All checks in question. 2. All exhibits covering

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UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Respondent,

against

JOHN W. WATSON,

Defendant-Appellant.

Index No.

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF NEW YORK

ss.:

James A. Steele

being duly sworn,

deposes and says that deponent is not a party to the action, is over 18 years of age and resides at  
310 W. 146th St., New York, N.Y.

That on the 29th day of September 19 75 at 1 St. Andrews Plaza, N.Y., N.Y.

deponent served the annexed Appellant Brief

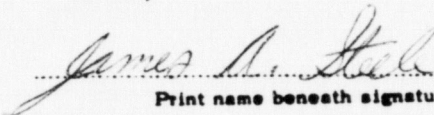
upon

Paul J. Curran

the Attorney in this action by delivering a true copy thereof to said individual  
personally. Deponent knew the person so served to be the person mentioned and described in said  
papers as the herein,

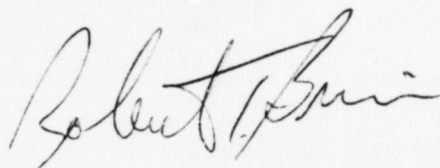
Sworn to before me, this 29th

day of September 19 75



Print name beneath signature

JAMES A. STEELE



ROBERT T. BRIN  
NOTARY PUBLIC, State of New York  
No. 31-0418950  
Qualified in New York County  
Commission Expires March 30, 1977